



Award No. 17083

Docket No. TE-16345

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, Susquehanna and Western Railroad Company, that:

1. Carrier violates Rule 2 of the Agreement between the parties hereto when each day, Monday through Friday of every week, it requires or permits Conductor Ray Sampson on Train 908 to handle clearance Form A at Butler, New Jersey.

2. Carrier shall, because of said violation, commencing sixty (60) days prior to the date upon which this claim is filed, in accordance with paragraph 2, Rule 38, compensate regular assigned Agent-Operator L. M. Hamler for a "call" as provided for in Rule 9 so long as such violative act continues.

3. Carrier shall permit a joint check of records to determine dates and amounts due Mr. Hamler.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties was effective June 18, 1957. Copy is available to your Board and by this reference is made a part of this submission.

Claimant is the owner of one of two positions listed in the Wage Scale of the Agreement at Butler, New Jersey, as follows:

Location	Office	Position	No. of Positions	Rate 11-1-56
Butler	BA	AO	1	2.134
		OC	1	2.086

The "Key" appended to the Wage Scale shows that the letters "AO" indicate Agent-Operator and the letters "OC" indicate Operator-Clerk.

Prior to August 3, 1961, these two positions were assigned to work as follows:

Time table No. 3 of April 27, 1941, has the following two items.

"Clearing Trains.

Trains will not leave initial station on single track without a clearance card form A or B when operator is on duty.

Superiority of Trains.

Eastward trains are superior to westward trains of the same class unless otherwise specified."

To the Carrier's knowledge, there is nothing in the Code of Operating Rules which would prohibit the departure of Train 908 without such form in view of the protection afforded under the special instructions above outlined which have been in effect over 20 years at the time of the alleged violation.

These rules were continued under special instructions in Time Table 37 of April 30, 1961.

In correspondence and several negotiations with the Employees it has been their contention that the first train out of Butler, Train 908, was cleared by the Conductor through the dispatcher, first contending that it was an actual clearance or in effect, although not actual, a tacit clearance, contending that the Conductor contacted the dispatcher each A.M. These allegations have been denied in conferences and correspondence.

Time Table No. 37 contains the following rule in conjunction with Special Instructions and General Rules:

"When necessary to enter upon main tracks or cross over from one main track to another, permission will first be obtained from train dispatcher. Permission to use main tracks or crossovers operated by interlocking plants will be given by signal indication."

OPINION OF BOARD: The first question to be decided is whether the Carrier violated Rule 38, the Time Limit Rule, with regard to the claim presented here. It is the Organization's position that Carrier's highest officer failed to disallow the claim, and that the claim must be allowed as presented. It is the Carrier's position that the time limit was waived.

Looking at the record, we do not find any support for the Carrier's position that the time limit was waived.

The record evidences that the claim before us was timely presented and appealed up to and including the Carrier's highest officer and that a conference was held thereon at that level of handling. Following the conference, Carrier's highest officer disallowed a claim in favor of the same Claimant, but it was not the claim here involved. Even though the General Chairman promptly called the discrepancy to the Carrier's attention, there is no evidence in this record that the Carrier's highest officer ever disallowed in writing this claim here involved. We hold therefore that Carrier defaulted under Rule 38 and that the claim must be allowed pursuant thereto.

In view of the above, we do not need to consider the merits of the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Rule 38, Time Limit Rule, was violated.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 23rd day of April, 1969.